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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DOUGLAS GORDON KELLEY,

Defendant and Appellant.

E048986

(Super.Ct.No. FVI900997)

OPINION

APPEAL from the Superior Court of San Bernardino County. Larry W. Allen,
Judge. Affirmed.

Patrick E. DuNah, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a plea agreement on July 16, 2009, defendant Douglas Gordon Kelley,
represented by counsel, pled guilty to one count of first degree or residential burglary

(Pen. Code, § 459),¹ and admitted that he had suffered a prior serious or violent felony strike conviction (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)). In return, the remaining allegations were dismissed and defendant was sentenced to the stipulated term of 12 years in state prison with credit for time served. Defendant appeals from the judgment. His notice of appeal challenges the sentence or other matters occurring after the plea.

I

FACTUAL AND PROCEDURAL BACKGROUND²

On January 26, 2009, defendant broke the front window of an 85-year-old, disabled victim's residence as he was sleeping. Defendant then went through the house, including the dressers and bedrooms. The victim woke up and saw defendant, whom he recognized. Defendant said, "It's okay. I am a friend of Emil's [the victim's son]." Defendant then left through the front door of the home, carrying a white plastic bag. The following day, the victim identified defendant as the suspect.

On May 12, 2009, a felony complaint was filed, charging defendant with one count of residential or first degree burglary. (§ 459.) The complaint further alleged that the victim was over the age of 60 (§ 1203.09, subd. (f)), and that defendant had suffered one prior serious or violent felony strike conviction (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)) and had served one prior prison term (§ 667.5, subd. (b)).

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The factual background is taken from the police reports. The parties stipulated that the court may use those reports as a factual basis for the plea.

On July 16, 2009, defendant pled guilty to first degree burglary (§ 459) and admitted that he had suffered one prior strike conviction (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)). In return, the remaining allegations were to be dismissed, defendant was to be sentenced concurrently with any other sentence, his probation in a misdemeanor matter was to be terminated, any fine was to be converted to jail time, and he was promised a stipulated term of 12 years in state prison with credit for time served.

At the change of plea hearing, the court reviewed the plea form with defendant and asked defendant whether he carefully read and understood the form. Defendant replied in the affirmative. The court also asked defendant whether his attorney went over the form with him in detail and if he had explained all the provisions of the form, including the charges against him, what he was pleading guilty to, the rights he would be waiving, and the consequences of pleading guilty. Defendant answered, “Yes,” and also indicated he understood his attorney’s explanation and had been given sufficient time to speak with his attorney about the change of plea. The court also explained to defendant the constitutional rights he would be giving up by pleading guilty, the plea agreement, the consequences of pleading guilty, and his maximum possible sentence to the charges. Defendant indicated that he understood his rights. He also replied in the negative when asked if anyone had used violence or threats to force him to plead guilty. Defendant further responded in the negative to the court’s inquiry of whether he had any questions about his plea agreement. The court found that defendant understood his constitutional rights, the charges against him, and the consequences of pleading guilty; that he

intelligently waived his constitutional rights; and that he freely and voluntarily entered into his plea of guilty.

After defendant waived his right to a presentence report, he was immediately sentenced in accordance with the plea agreement and awarded 12 days of credit for time served.

On August 4, 2009, defendant filed a notice of appeal based on the sentence or other matters occurring after the plea. His request for a certificate of probable cause was denied.

II

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493] setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

In the absence of a certificate of probable cause, we may not consider the validity of the plea, whether the change of plea was knowingly, intelligently, or voluntarily made, or whether he was deprived of effective assistance of counsel. (§ 1237.5; see also *People*

v. Stubbs (1998) 61 Cal.App.4th 243, 244.) The sentence was authorized and was imposed in accordance with the terms of the plea agreement. (§§ 460, subd. (b), 461(2).)

We have completed our independent review of the record and find no arguable issues.

III

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.